

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, October 3, 2001, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Steve Duvall, Linda Hunter, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor (Mary Bills and Gerry Krieser absent); Kathleen Sellman, Ray Hill, Jason Reynolds, Becky Horner, Brian Will, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held September 19, 2001, as corrected. Carlson moved approval, seconded by Duvall and carried 6-0: Carlson, Duvall, Newman, Schwinn, Steward and Taylor voting 'yes'; Bills, Hunter and Krieser absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Carlson, Duvall, Hunter, Newman, Schwinn, Steward and Taylor; Bills and Krieser absent.

The Consent agenda consisted of the following items: **CHANGE OF ZONE NO. 3341; SPECIAL PERMIT NO. 1013-I; SPECIAL PERMIT NO. 1920; SPECIAL PERMIT NO. 1922; SPECIAL PERMIT NO. 1931; SPECIAL PERMIT NO. 1932; SPECIAL PERMIT NO. 1933; SPECIAL PERMIT NO. 1934; FINAL PLAT NO. 01009, HARTLAND HOMES EAST 5TH ADDITION; FINAL PLAT NO. 01021, NORTH CREEK COMMERCIAL PARK; COMPREHENSIVE PLAN CONFORMANCE NO. 01003 and STREET AND ALLEY VACATION NO. 01015.**

Item No. 1.3, Special Permit No. 1920; Item No. 1.7, Special Permit No. 1933; and Item No. 1.12, Street and Alley Vacation No. 01015, were removed from the Consent Agenda and had separate public hearing.

Duvall moved to approve the remaining Consent Agenda, seconded by Carlson and carried 7-0: Carlson, Duvall, Hunter, Newman, Schwinn, Steward and Taylor voting 'yes'; Bills and Krieser absent.

Note: This is final action on Special Permit No. 1920; Special Permit No. 1922; Special Permit No. 1931; Special Permit No. 1933; Hartland Homes East 5th Addition Final Plat No. 01009; and North Creek Commercial Park Final Plat No. 01021, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1933
FOR A 96' WIRELESS TELECOMMUNICATIONS
FACILITY ON PROPERTY LOCATED AT
5200 CALVERT STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Conditional Approval.

This application was removed from the Consent Agenda and had separate public hearing due to a letter received in opposition.

Proponents

1. Harvey Cooper appeared on behalf of the applicant, Cricket Communications. This site is located on the campus of Union College. Cricket proposes to put a monopole on the west side of the ballfield complex next to some existing buildings. The letter in opposition is not aimed so much at the specific tower location, but more at the area of the Union College property which she claims to be unsightly and causes drainage problems. Cricket proposes a 90' monopole with slim antennae close to the top that only extend out about 6" and 6' antennae on top. The total height will be 96' but the main visibility is the 90' monopole. They will tear down the two existing buildings and build one 64 x 18 equipment building. This is a two-carrier pole. There is sufficient room for a second carrier and for the equipment belonging to Union College.

Cooper showed a map of the service area before and after this site, indicating that Cricket had to look far and wide to come up with this site in that the search ring was really to the south but there was no appropriate land use there to accommodate this tower.

Cooper also exhibited the existing condition of the site. Union College has approximately 20 light poles in their field which range in height from 49 to 72 feet. The Cricket facility needs to be at 90 feet. Union College would not agree to have Cricket replace one of the existing light poles. Union College requested this configuration. Along the perimeter of the four ballfields there are a number of poles that extend 49-64 feet. Cricket will be putting in some additional trees for mitigation and to maximize the visibility of the site.

Cooper clarified that the new building will match the siding of the existing building on the premises and will have a pitched roof.

Carlson commented that the existing light poles would have been a perfect marriage. Ken Weber, consultant for Lucent/Cricket, explained that the primary objection from the College was that most of the lighting is interior to the ballpark facilities and they wanted to keep the Cricket building equipment out of the activity area of the park. Thus Cricket ended up on the fringe of the ball park property because of the need for more building space. The ground equipment does not have to be close to the pole. This placement was at the request of the College. Carlson wondered whether the building could be where it is located with just the antenna on the light pole. Weber reiterated that Union College is the property owner and they do not want Cricket to replace a light pole in the ballfield.

Cooper defined the other sites considered, including replacing a street light; a rooftop location at 4207 So. 58th, a rooftop location at 4207 So. 58th, a stealth flag pole at 4700 So. 56th. Union College does not want any more antennae on their rooftops. There is an existing Union College communications pole but they do not want any more on the main campus. This is a pretty tight area. Cricket has considered a lot of other alternatives.

Carlson thinks this looks like a pretty good site, but he is surprised Union College does not want them to replace a light pole.

There was no testimony in opposition.

Staff questions

Hunter thought that the ordinance required the ability to have two other carriers on a facility. Brian Will of Planning staff clarified that at this height it allows one other user. A height of over 100' allows two other users.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 3, 2001

Carlson moved to approve the staff recommendation of conditional approval, seconded by Duvall and carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

STREET AND ALLEY VACATION NO. 01015
TO VACATE SOUTH 91ST STREET BETWEEN
PINE LAKE ROAD AND NEBRASKA HIGHWAY 2.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

This application was removed from the Consent Agenda and had separate public hearing at the request of the staff.

Jason Reynolds of the Planning staff requested that Analysis #3 be revised: "If this vacation is approved, the sale should be subject to the condition that a public access easement is retained over the area of vacation until the new alignment of S. 91st Street is constructed dedicated." This brings the street vacation into conformance with the Annexation Agreement associated with the 84th & Hwy 2 Annexation No. 01006.

Proponents

1. **DaNay Kalkowski** testified on behalf of the applicants, **Eiger and Andermatt**. She believes the staff report does a good job explaining this request because the developer will be dedicating new right-of-way.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 3, 2001

Duvall moved to find the proposed street vacation to be in conformance with the Comprehensive Plan, with the revision to Analysis #3, seconded by Hunter and carried 7-0:

Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

SPECIAL PERMIT NO. 1920
FOR A WIRELESS COMMUNICATIONS FACILITY
ON PROPERTY GENERALLY LOCATED
AT 6000 "A" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Conditional Approval.

This application was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Carlson.

Proponents

1. Harvey Cooper testified on behalf of **Cricket Communications**. This is a proposal for a facility at the southwest corner of the football field at Pius X High School where Cricket will replace an existing 75' light pole with an 85' pole with antennae and lightning rods up to 91'. The ground equipment will be placed under the west grandstand and will be enclosed and not seen. It will be a 2-carrier pole because it is under 100'.

Cooper showed the search ring. This facility will not have the large triangular base which is typical with cellular carriers. Cricket is attempting to make this less visible with a slimmer profile. The antenna cannot be below the light rays because the coverage would decrease tremendously and it would cause shadowing on the football field.

Hunter wondered how that allows a second user if the height is a problem. Cooper explained that other carriers have different technology that could make it possible. There are two other carriers on the east side with poles. Cricket is matching the height of the other two towers.

Carlson inquired whether the Cricket pole is strong enough to support an extension for a second carrier. Ken Weber, consultant for Cricket, advised that it would probably not be possible the way it is currently designed.

Carlson commended the applicant in general because he believes the sites are very creative and good. He does not believe we should have a ballfield in town without a wireless carrier. Carlson inquired about collocation on the Qwest pole just across the field. Cooper indicated that Cricket cannot get sufficient coverage. What is being proposed provides the coverage

that Cricket needs. Weber also advised that they would lose half of the capacity on the site by going from 6 to 3 antennas. Every carrier has a little different technology.

Hunter is concerned with there already being two other poles with other users and she wondered whether it would be more beneficial to raise the height a little bit on a single pole to allow another user. Cooper indicated that Cricket can do a lot of designing but they also must comply with the ordinance. If we are in two-carrier design and start raising for three carriers, then there is question about sufficient land space for ground equipment. As we designed it now, there is room underneath for another carrier. Other carriers may not have the problems that we have with regard to height.

Weber offered that the majority of the carriers are finishing up their initial design coverage phase. As all of those mature, those carriers will be doing capacity and fill sites. Thus a lot of their expansion sites will be able to be lower and with fewer antennas. The only other carrier building out their initial coverage at this time is VoiceStream.

Greg Ferris testified on behalf of the applicant. When they get to the capacity buildout, they can use the flush mount antennae which can go under the light. Cricket had to go 90 feet at Union College to use a flush mount antenna. At this location, Cricket is going lower. They have attempted to stay as close to the top of the light standards as possible. What is available underneath will be suitable for those carriers that are already at their capacity amount.

It was clarified that Cricket will own the pole and pay rent to Pius.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 3, 2001

Duvall moved to approve the staff recommendation of conditional approval, seconded by Steward and carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

Note: This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

CHANGE OF ZONE NO. 3340
FROM R-1 RESIDENTIAL TO B-1 LOCAL BUSINESS
ON PROPERTY LOCATED AT SO. 27TH & WOODS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Approval of a reduced area.

Tom Cajka of Planning staff submitted two letters in opposition from the Country Club Neighborhood Association and Linda Wibbels.

Proponents

1. **Mark Hunzeker** appeared on behalf of **U.S. Bank**, the applicant. The facility at 27th & Woods Blvd. was built a long time ago in an area where a substantially new housing area was developing to the north. The bank site actually includes an entire row of lots which are residential that run along 27th Street to the corner of 27th & Kucera Drive and include the corner lot at 27th & Kucera. Hunzeker explained the reason for this change of zone request. At the time the facility was built for State Federal Savings, the zoning was left R-1 at the east edge of that row of residential lots. The landscaping has matured over the past 30 years to the point where this facility has become virtually invisible. There is a pole sign in front of the building, but you can't see it until you are virtually underneath it. The reason the applicant wishes to proceed with this project is to provide at least minimal identification for this facility.

The applicant has met with staff twice. The last time Hunzeker met with Mike DeKalb, this was the proposed solution, it being the minimum that would permit the bank to do what they need to do and to also be consistent with what has been done in at least one other place in the city. The other example is at Plaza Mall South at 40th & South Street. A strip was rezoned in front that went out to 40th in order to provide an identification sign for Plaza Mall South.

Hunzeker showed photographs of the proposed sign on this site. This sign would be taken out of the downtown bank lobby and mounted permanently at this location. Even at this location, it will be difficult to read from the south. And from the north it is not particularly great because there are several large trees in the right-of-way. Hunzeker submitted that this does not create a perfect solution to the identification problem but without removing a substantial amount of mature landscaping, this is the best they could come up with.

The staff is suggesting that the sign be located 30' back from the property line. But this buries it behind the mailbox and trees on the corner. It would be very difficult to see from the south and it would require removing a tree.

Hunzeker stated that the intent of this request is that the bank will remove the pole sign on the site when this sign is in place. Hunzeker also offered that if it makes the decision easier, the applicant would agree to consider placement of the sign 15' back from the front property line, which splits the difference with the staff. Hunzeker suggested that there are other alternatives that are not very attractive, but the applicant is trying to be sensitive to the neighborhood and yet get some identification of this site.

Hunzeker observed that the staff recommendation is to stop the rezoning 30' east of 27th Street. He believes that the applicant could probably live with 15' but if it goes any further than 15', the applicant will have to come up with something else. Hunzeker would not be opposed to a condition being placed on this rezoning that requires removal of the pole sign and that there be no pole sign on this portion of the site. This applicant is not interested in putting a pole sign on this small strip nor interested in keeping the existing pole sign.

Steward inquired whether the applicant would be willing to accept the condition that there could be no future pole sign. Hunzeker believes that would be acceptable. Steward's concern is that the applicant or some other property owner could take this sign down and put up a pole sign. Hunzeker is certain he is authorized to agree that there would be no pole sign placed on this newly rezoned portion. They have not specifically discussed never ever putting a pole sign on the rest of the site but he does not believe the bank would object to that as a condition.

Carlson inquired whether the mature trees will be removed if this rezoning is denied. Hunzeker stated that they would not. The applicant has searched for the best way to put some identification on this site without doing any modification of the landscape. They do not want to do that. From a corporate identification perspective, this site is a real problem—it is virtually invisible and there needs to be some identification. They have chosen to seek the least intrusive in terms of any major change on the site.

Opposition

1. Phillip Kaye, 22 Bishop Square, President of Bishop Square, testified in opposition. Bishop Square is opposed to incremental transformation from residential to commercial. Bishop Square is particularly concerned because almost all of the land of the bank which faces 27th Street is opposite Bishop Square so they are our neighbor. In 1987, the bank added 17 parking stalls to an area that was residential. That was increment number one. This probably was a reasonable thing to do; however, going further and starting to further commercialize seems to be inappropriate. The concern of the Planning Commission should be for the people in the neighborhood who have made considerable investments in their property. Bishop Square has approximately 50 units and their goal is to have a beautiful garden area that is set in a residential area. If this were to pass, the movement is away from the residential and directed toward commercial.

Kaye noted that there is another banking institution across the street from US Bank. If the city begins to increase the commercial satisfactions involved for US Bank, is there any reason to assume that the city would not want to do the same for the bank directly to the south? This applicant knew what the outside architecture was when they bought the bank. Let them live with that which they selected and not change incrementally the whole residential character of a neighborhood.

Staff questions

Steward's problem with this is the process of spot zoning. Steward asked staff to describe any other means for accomplishing this without the process being proposed. Tom Cajka of Planning staff stated that the R-1 zoning does not allow the sign that the applicant is requesting. To have a sign for a commercial enterprise requires the B-1 zoning because it allows signs. Staff's analysis is that the staff recommendation is the only alternative to allow the sign that they desire. The signs in the B-1 district would allow either a pole sign or a ground sign, and that would be allowed in the front yard setback.

Steward is also concerned that the B-1 zoning creates greater permission than what is being requested in this specific proposal. Can we place a conditional use upon the rezoning? Rick Peo of the City Law Department stated that the Law Department is not in favor of contract zoning. In order to have a contract zone, it requires an agreement between the developer and the city separate from the change of zone. The case law that allows contract zoning also provides the city with a remedy if there is not an agreement. If the applicant asked for the use and then does not go forward, the city would have the right to rezone the property to its former zoning and stop the issuance of building permits. Peo believes the city has adequate remedy even without going through contract zoning to be sure that what is being proposed is what is done.

Steward's concern is the type of sign. If they were requesting just a blanket of B-1 approval with no direct stipulation as to the kind of sign, then we could end up with a pole sign. Peo believes the applicant has stipulated that they want the B-1 zoning in order to put in a ground sign. If the zoning is approved on that basis, and the applicant came forward with a sign permit for a pole sign, Peo believes the city would have a right to say no and introduce an ordinance to rezone to property back to R-1.

Response by the Applicant

Hunzeker suggested that if an agreement is required, the applicant is willing to do so; however, he does not believe an agreement is necessary in order to enforce the intent. This does not impose nor cause any harm to the Bishop Square area. The townhomes all face inward from 27th and are fenced and landscaped heavily from 27th Street.

Hunzeker pointed out that the B-1 district permits a lot of signage. He believes it would be a travesty to put a wall sign on that building that covers 35% of the area. The applicant tried to work with staff to come up with the best solution.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 3, 2001

Hunter moved to deny, seconded by Newman.

Hunter believes that allowing this application allows business to encroach into residential neighborhoods, and it opens up a floodgate for future potential signage in areas that are not meant to have that type of signage. Banks are in transitional areas around residential; however, she does not find the loss of one tree to be a huge loss in terms of not creating a future encroachment in residential areas. If they need to redo their landscaping so that their signs are visible, that is a small price to pay. Because a mistake has been made in the past in allowing this to happen does not mean it needs to be perpetuated in the future.

Newman agreed with the testimony in opposition.

Steward does not think this is an encroachment. He thinks it is an improvement. If we are taking down a pole sign and putting up a visually less obtrusive sign in a respectful location, it seems to be an opportunity to work with the business that is concerned about residential transition. We don't have good means for making these transitions between zones of use. Once again, we have an awkward situation where there needs to be some special provision. He strongly believes that the removal of a large sign versus a small one is an improvement.

Duvall stated that he will vote against the denial. He believes this is an improvement. He believes the issues are benign and they don't have to cut down a tree.

Carlson will support the motion to deny because he is troubled by this "sliver" zoning. It is less for him whether the ground sign is better than the pole sign. It's just that the way this is being accomplished is a bad mechanism. He believes it is a poor use of the zoning code.

Hunter also observed that regardless that this is US Bank and a quiet use, there are many commercial uses that would like to have bigger or more visible signage on main streets and avenues. Everybody would like to have more visibility as main corridors develop, but it is not a reason to allow commercial signage to encroach upon R-1 zoned areas.

Motion to deny failed 4-3: Newman, Taylor, Carlson and Hunter voting 'yes'; Duvall, Steward and Schwinn voting 'no'; Bills and Krieser absent.

Steward moved approval of an area that allows a 15' setback, conditioned upon an agreement between the city and the property owner which states that only the sign as shown and proposed during this public hearing shall be allowed, and that no other sign at any location on the property shall be allowed, seconded by Duvall.

Steward does not like the use of a spot zone condition to solve a particular problem; however, in his opinion it seems like this results in a more aesthetic circumstance as well as accomplishing what the owner wants to accomplish. This would be an agreement for this case and this case only.

Carlson reiterated his opinion that it is less the sign than what we're doing with this "sliver" type of zoning. We don't want to establish a precedent. He thinks there will be more "sliver" zoning coming forward if this is approved. He does not believe that is why the zoning code exists.

Schwinn believes this is a very unique situation because it seems to him that those that went before us decided to use the R-1 zoning on So. 27th to serve as a setback buffer for an existing shopping center. We can call it residential, but this is really the northwest corner of a shopping center which is backed up on the east side by a rather large apartment complex. He believes Steward's proposal is a good solution. He prefers the ground signs.

Hunter commented that the Commission seems to continually try to call something by something different than what it is. She agrees with the opposition. This location was designed and set and it has been there through several owners. Why would we make this exception? The underlying factor is rental versus ownership. There are plenty of people with a side yard off of which they would like to get extra rent. Hunter does not believe this is a situation that should be created. She believes there are ways to solve the problem on the property.

Motion to approve, with the condition for an agreement, failed 3-4: Duvall, Steward and Schwinn voting 'yes'; Newman, Taylor, Carlson and Hunter voting 'no'; Bills and Krieser absent.

This application is held over for administrative action on October 17, 2001. Public hearing is closed.

CHANGE OF ZONE NO. 3328,
A TEXT AMENDMENT REGARDING DWELLINGS
FOR NON-RELATED PERSONS

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Approval

Jason Reynolds of the Planning Department submitted a proposed amendment to the text to move the parking requirement section to the section for parking within a CUP as opposed to a separate parking section. This amendment also adds language to the end of the dwellings for non-related persons section. The memo also outlines two conversations Reynolds has had with Commissioner Carlson in relation to this text amendment.

Reynolds noted that if the recommended change in the parking requirements text is going to be approved, then this application would need to be held over and readvertised.

Proponents

1. Mike Rierden appeared on behalf of **The Dinerstein Companies**. Back in 1972, the City Council approved a non-related occupant type of ordinance. This is an attempt to better that particular provision by tagging on some parking and square footage requirements in a CUP. Because of our meetings with the Mayor's office and Planning, we agree that this type of housing should be within a CUP. This text amendment is an accumulation of discussions he has had with the Law Department and Planning staff. It started out as a proposal he made and it has evolved into a good solution.

Section 27.67.065 would be the parking regulation which we really didn't have prior hereto. In the case of the 1st and Charleston application, the parking requirements would be 1 space per occupant of a bedroom in the project.

The amendment to section 27.70.020 limits this type of housing to a CUP and goes through the various zoning districts and puts square footage limitations as far as each unit. In the case of R-3, it would be 1 occupant for every 2,000 sq. ft. within a CUP. In the case of Special Permit No. 1928 at 1st & Charleston, the project will be built on approximately 22 acres. The total acreage for the CUP is 38 so the project is well below the maximum allowed.

Rierden pointed out that the density does not really increase with these changes. The density stays right with the base zoning district. Rierden believes this provides the city and the University community with additional types of housing with the safeguards built in. This change to the text will not be detrimental in other parts of the city.

Rierden advised that the applicant has met with the Mayor who indicated that this is the type of development that he envisions for this area (Special Permit No. 1928 at 1st and Charleston). It may be I-1 zoning right now, but the staff is suggesting that perhaps a subarea plan would be needed. Rierden submitted that the subarea plan is happening today with the new baseball complex in place and this proposal. There is a letter in support from the property owner to the east. Things are happening in this area and Rierden believes the subarea planning is occurring.

Rierden advised that he has met with the North Bottoms Neighborhood Association and he anticipates a letter in support. They would rather see something like this than more I-1 zoning or impound lots. They are concerned about what might happen if the zoning is left as it is.

Rierden has also met with the West "O" Business Association and the University of Nebraska Association of Students. The Association of Students has not yet taken a vote but all indications are that they support the project.

2. A representative of The Dinerstein Companies out of Houston, Texas, testified in support. The Dinerstein Companies have been building multi-family housing for 45 years and have targeted student housing in University cities, e.g. Greenville, NC, Laramie, WY, Lansing, MI. They have complied with special permit regulations for 4-bedroom units in several college communities. The four bedrooms are necessary in the mix to make the construction feasible. The units are rented by the bedroom which allows The Dinerstein Companies to come into a University city and bring what is considered to be a high end property for students.

The Dinerstein Companies has a parking policy of one parking space per bedroom. They also provide guest parking. All residents are given a sticker for their automobile. Any vehicle that does not have a parking sticker is towed. Towing signs are posted on the site. There is full management staff on-site and a courtesy officer housed on site. The parking is enforced.

Newman noted that staff had requested the applicant to meet with the Neighborhood Roundtable. Rierden stated that he is on the Roundtable's October 11th agenda. This has been an evolving project in getting the language put together. Rierden did not want to go to the Roundtable until he had a final draft of the language. It wasn't until a week ago that the final draft was agreed upon between the applicant and the staff.

Hunter wanted to know how this text change would affect other areas of Lincoln. Rierden believes that it puts in some safeguards. The non-related persons dwellings must be within a CUP; it provides for a 2,000 sq. ft. per unit limitation; and adds the new parking protection. He believes that this betters the situation than it is today because this type of housing under the 1972 ordinance allows for it outside of a CUP where there would be no review process.

Jason Reynolds of Planning staff referred to page 123 of the agenda, which provides a chart showing the dwelling units per acre allowed in the base zoning district; in the CUP; and occupancy per acre. This text amendment does not increase the density that would otherwise be permitted in the zoning district.

Steward was not in favor of deferring the text amendment for readvertising and proceeding to vote on the 1st and Charleston project. Reynolds concurred that the CUP as proposed does require this text amendment before it can be approved because the CUP shows 4-bedroom units with the intention that there be 4 occupants. However, the Planning Commission is making a recommendation to the City Council.

Rierden urged that timing is critical on this project. Rick Peo of City Law Department suggested that the Commission could act on the existing proposal and then the revised proposal could be processed separately and could catch up before the CUP goes to the City Council.

3. Rich Wiese, 730 Pier 3, testified in support. The West "O" Business Association was concerned about the number of people living in a particular area because this area is experiencing problems where there are duplexes side by side with college students as residents. This proposal is acceptable.

Opposition

1. Carol Brown, resident and secretary of Landons Association and Chair of the Mayor's Neighborhood Roundtable, requested that this application be deferred until the Roundtable has had the opportunity to fully review it. This proposal will affect all neighborhoods. She noted that Rierden represents a property owner to the east of 21st & Superior Street where the neighborhood would not want this to happen because of the concern about off-street parking. She confirmed that Mr. Rierden is scheduled to be on the Roundtable agenda on October 11th. Therefore, she requested a two-week delay until the Commission has heard from other neighborhoods. The parking and street issues need to be considered. She is not against or in favor. She is in favor of affordable housing. We just need to be real careful and expose it to the neighborhoods.

2. Danny Walker, 427 E Street, testified in opposition. He takes exception to Rierden's testimony. He believes Rierden is making a lot of assumptions that are still up in the air. One

is the reference to North Bottoms. There is no letter in support. There is no letter from the University Students Association. As far as the Planning Department approving something like this, he thinks it is amazing. Years ago the City got in trouble by standing back and not doing something on parking spaces in these complexes. They have loaded up streets that are not wide enough for two-lane traffic. As far as regulating the parking, it sounded good, but you need to keep in mind that the City finds it impossible now to enforce the current parking regulations. "This opens up a hornets nest". There are already traffic problems in the area, which are going to increase. Wouldn't the student housing be better suited in an area such as Antelope Valley rather than in the middle of a floodplain?

Response by the Applicant

Rierden feels comfortable with the language as presented. He would prefer to move forward. He will meet with the Neighborhood Roundtable before this goes to City Council. As far as the University Students Association and North Bottoms, Rierden was told by Sheryl Burbach that North Bottoms would be sending a letter in support, and the legal counsel for the University Students indicated they felt this was something that would add more types and selection of housing to the University community.

Reynolds clarified that the text amendment proposes that the parking requirement be 1 parking stall per occupant in the dwelling. This compares with 2 spaces per dwelling unit as required in the R-1 through R-4 districts. In R-5, the requirement is 1.75 spaces per dwelling unit. Within a CUP, the requirement is 2 spaces per dwelling unit. This text amendment provides more parking than is currently required by the CUP or the base zoning districts.

Carlson made a motion to defer for two weeks, seconded by Steward.

Duvall does not believe deferral is necessary.

Steward is in favor of a deferral because the text amendment affects every neighborhood in this city. He would prefer to clear up the language and have the opportunity for feedback from the neighborhoods at the same time.

Hunter believes that delay is preferable to error. This is possibly a very positive change but we need to make sure that it is good for everyone.

Newman will support the deferral because she is a true believer in the Neighborhood Roundtable for getting the news out to neighborhoods and this does impact every neighborhood.

Schwinn believes that these text amendments will actually help the neighborhoods but he agrees that they should be run through the Neighborhood Roundtable first.

Motion to defer with continued public hearing and administrative action scheduled for October 17, 2001, carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

CHANGE OF ZONE NO. 3329
FROM I-1 INDUSTRIAL TO R-3 RESIDENTIAL
and
SPECIAL PERMIT NO. 1928,
OAK CREEK COMMUNITY UNIT PLAN,
ON PROPERTY LOCATED AT
NO. 1ST STREET AND CHARLESTON STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Approval of the change of zone and conditional approval of the special permit.

Jason Reynolds of the Planning staff submitted a letter in support from the West "O" Street Area Business Association and Chameleon & Company, Inc.

Proponents

1. **Michael Rierden** appeared on behalf of the applicant and agreed to a deferral of his presentation and deferral of the public hearing so that it remains with the text amendment previously deferred.

Motion to defer was made by Carlson, seconded by Hunter, with continued public hearing and administrative action scheduled for October 17, 2001. Motion carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

2. **Richard Wiese**, testified in support on behalf of West "O" Business Association. He does not want to lose this opportunity. They have been working with Doc White for 3 ½ years on getting this planned development and he does not want to see it lost. We have worked too hard to better this area.

Opposition

1. **Danny Walker** testified in opposition. It is fine with him if The Dinerstein Companies do not build in Lincoln. We have enough party houses as it is.

PRELIMINARY PLAT NO. 01008,
I-80 BUSINESS PARK 1ST ADDITION,
ON PROPERTY LOCATED AT
N.W. 27TH STREET AND WEST "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Conditional approval.

Becky Horner of the Planning staff submitted a copy of the previously approved preliminary plat for the Commission's information.

Proponents

1. Mark Hunzeker appeared on behalf of **Hampton Development**. This is going to be a very nice primarily warehouse and general commercial area. Conditions #1.1.1 and #1.1.2 require sidewalks on one side of the private roadway within the property and along the west side of N.W. 27th Street. N.W. 27th is a street that leads from West "O" at approximately the interstate interchange, goes north over the interstate and turns into a gravel road that runs under the airport runway. There is very little, if anything, in the area that is remotely pedestrian oriented. There is the possibility of sidewalks being put in N.W. 27th Street at some point in the future if development on the north side of the interstate progresses to the point where sidewalks would be necessary or desirable. Hunzeker requested that Conditions #1.1.1 and #1.1.2 be deleted. At the same time, Condition #2.2 should be revised to waive sidewalks on both sides of the private roadway, and "and N.W. 27th Street" should be added to Condition #2.3.

Newman sought confirmation that this is strictly a warehouse district. Hunzeker responded that it is warehouse and general commercial oriented type business. It is not going to be a retail area.

Schwinn observed that typically, when sidewalks are waived, the city reserves the right to require them at a later date. Hunzeker would not disagree. He knows the city has the authority to order in sidewalks along public streets but he does not know if that applies on private roadways. The developer will agree not to object if at some point in the future the city orders the sidewalks constructed. He does not believe this area will develop into pedestrian oriented type facilities.

Opposition

1. Rich Wiese, testified on behalf of the **West “O” Business Association**. He requested that the Commission keep in mind that the Lincoln City Limits goes out to N.W. 56th and West “O” and there have been problems with people coming from Schumachers, Crete Carrier, the motels and businesses that are walking into the City. The West “O” businesses have worked hard to get sidewalks under the bypass up to N.W. 27th and West “O” (from N.W. 22nd and West “O” Street to N.W. 27th and West “O” Street). That sidewalk has been approved by the City Council and is intended to be constructed as soon as possible. Wiese suggested that waiving the sidewalks now is okay but someday the city may be held responsible for an accident from people having to walk in the highway when that property is developed. If the property is developed, he believes sidewalks should be put in. There should be sidewalks on any property abutting West “O” Street.

Staff questions

Carlson inquired why the sidewalks on the north side of West “O” west of N.W. 27th should be waived. Horner advised that the staff analysis explains that these sidewalks were waived with the previously approved preliminary plat, plus that sidewalk would lead onto the on-ramp of the interstate. Staff would not be opposed to denying this waiver, however.

Carlson wondered whether there is a situation where we have a sidewalk around the overpass. Dennis Bartels of Public Works explained that the sidewalk that Mr. Wiese referred to will go underneath Capitol Parkway West. It takes the sidewalk west to N.W. 27th Street along “O” Street at ground level. The sidewalk requested to be waived refers to the entrance ramp just west of this project. Bartels agrees that the sidewalk will definitely be needed in the future. Right now, the city does not have plans to extend the sidewalk further west of N.W. 27th Street, but he believes it will be needed in the future.

Response by the Applicant

Hunzeker agreed that the sidewalks on West “O” were waived with the previously approved preliminary plat. Virtually all of the frontage this developer has along the south side is on the interstate on-ramp and he can’t even imagine wanting to have a sidewalk that would come along West “O” on the north side and cross that on-ramp. That would not be a safe place to be walking, particularly if you are walking west. It makes all kinds of sense not to have a sidewalk there. As far as N.W. 27th, Hunzeker submitted that this is not a retail or pedestrian oriented commercial area—these are trucking warehouse type businesses and N.W. 27th runs over the interstate and on up to the south side of the airport as a gravel road.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 3, 2001

Carlson moved to approve the staff recommendation of conditional approval, seconded by Hunter.

Carlson commented that the Commission runs into this over and over again where we have a commercial application where it is stipulated that no one will walk there. Carlson is to a point where he has to agree to disagree. He believes there are pedestrians that will use N.W. 27th Street. He never agrees with the idea that there is not going to be anything there. We run into problems when people ask to have the sidewalks put in later by assessment district. He thinks they should be put in when the property is developed.

Hunter asked a process question about sidewalk districts. If the sidewalk is waived, how does it get built later? Bartels advised that the City Council has the authority to order the sidewalks in. The property owner is given a period of time to build it at his own expense. If the owner chooses not to build it, then the city orders the district constructed and the gaps not built by property owners are put under contract. The cost is then assessed back against the property owner.

Steward moved to amend, deleting Condition #1.1.1 and amending Condition #2.2 to grant the waiver of sidewalks on both sides of the private roadway, seconded by Duvall. Steward clarified that the intent of his motion is to not require sidewalks on the private roadway, but to require the sidewalk on one side of N.W. 27th Street.

Carlson wondered about pedestrian circulation within the site. Steward senses that it will not be an issue and if it becomes an issue, the city can require it.

Steward noted that everything that is within this property is private roadway. The net effect of his motion is that the sidewalk on N.W. 27th Street would be required and all others would be waived.

Taylor commented that he is all for sidewalks but he is not convinced that there should be a sidewalk required on the private roadway.

Motion to amend carried 6-1: Newman, Duvall, Taylor, Steward, Hunter and Schwinn voting 'yes'; Carlson voting 'no'; Krieser and Bills absent.

Duvall noted that there is a lift station in this project. He thinks it is unique but he likes it.

Main motion for conditional approval, as amended, carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

STREET AND ALLEY VACATION NO. 01011
TO VACATE THE EAST 20' OF SO. 12TH STREET
FROM A TO B STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

The applicant submitted a written request for another deferral until October 31, 2001. So moved by Duvall, seconded by Newman and carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

STREET AND ALLEY VACATION NO. 01014
TO VACATE THE EAST 20' OF SOUTH 7TH STREET,
GENERALLY LOCATED AT SO. 7TH AND "N" STREETS.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Becky Horner of the Planning staff submitted a new Condition #2 to be added: "The City shall retain a permanent conservation easement over the vacated right-of-way."

The attorney for the applicant submitted a written request to place this application on pending indefinitely.

So moved by Duvall, seconded by Newman and carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

SPECIAL PERMIT NO. 1929
FOR AUTHORITY TO STORE AND
DISPLAY VEHICLES FOR SALE AND RESALE
IN THE FRONT YARD
ON PROPERTY LOCATED AT
702 WEST "O" STREET.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Tom Cajka of the Planning Department presented a revised landscape plan submitted by the applicant. This revised landscape plan does not change the staff recommendation to deny this special permit.

Taylor moved to deny, seconded by Hunter.

Hunter commented that she drove out on West "O" and does not quite understand why there was a petition signed by property owners out there to approve this when there is another car dealership 200' further west that has the cars parked behind the front yard. She believes that approval of this special permit will encourage requests from other car dealerships on West "O". It would just be the start of creating more and more of this.

Hunter inquired about the opened hoods, etc. Ray Hill of the Planning Department advised that the prohibition of opened hoods is a condition that the city has routinely placed on every application where parking has been granted in the front yard for the storage of vehicles for sale. This is a condition of the special permit. Hill also cautioned that the other dealerships may be in a different zoning district that does not have the front yard requirement.

Schwinn commented that he was on the Commission when they voted on Lincoln Dodge some four years ago and he believes Lincoln Dodge has done an excellent job. He has looked at Red Star and believes they have done a good job of improving their site. He is sensitive to the fact that we will see more if we do this one, but he is not so sure that having used cars parked neatly against the street isn't better streetscape than transient cards parked haphazardly.

Motion to deny carried 5-2: Newman, Taylor, Steward, Carlson and Hunter voting 'yes'; Duvall and Schwinn voting 'no'; Krieser and Bills absent.

Note: This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action of the Planning Commission.

There being no further business, the meeting was adjourned at 3:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 17, 2001.